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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/046,897	01/17/2002	Gerhard J. Haas		2611

7590 04/08/2003
Walter D. Ames
6718 Wemberly Way
McLean, VA 22101

EXAMINER

COE, SUSAN D

ART UNIT	PAPER NUMBER
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1654

DATE MAILED: 04/08/2003

8

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/046,897

Applicant(s)

HAAS, GERHARD J.

Examiner

Susan Coe

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on December 3 and 30, 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) 9-14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

1. The amendment filed December 30, 2002, has been received and entered. The text of those sections of Title 35, U.S. Code, not included in this action can be found in a prior Office action.
2. Claims 1-14 are pending.

Election/Restrictions

3. Applicant's election with traverse of Group I, claims 1-8 in Paper No. 7, dated December 30, 2002, is acknowledged. The traversal is on the ground(s) that the product as claimed cannot be used for a different purpose due to the presence of process limitations in the product claim. This is not found persuasive because process limitations do not make the claimed product different from a hops composition that could be used in making beer. The composition is the same despite its intended use; therefore, the restriction requirement is considered valid.

Applicant also argues that the search of both groups would not be burdensome because both groups are classified in the same class and subclass. However, while a search of the US patent literature might overlap to some extent, a search of both groups would not necessarily be coextensive in regards to the literature search and foreign patent search. Therefore, a search of both groups would be considered burdensome.

The requirement is still deemed proper and is therefore made FINAL.

4. Claims 9-14 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 7.

5. Claims 1-8 are examined on the merits.

Claim Rejections - 35 USC § 103

6. Claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese Pat. Appl. No. 01172332 A.

As stated on page 4 of the previous Office action, JP '332 teaches using an aqueous hops solution to treat bovine mastitis. Applicant has provided an English translation of this document and argues that the reference does not teach the claimed invention because the reference does not teach using the aqueous hops extract as a wash or a dip. However, while the reference might not specifically disclose using the hops composition as a wash or a dip, the reference does teach that the hops composition can be applied to the skin. Thus, a person of ordinary skill in the art would clearly understand the benefits of applying the hops composition to the infected area using a washing or a dipping procedure. Therefore, an artisan of ordinary skill would be motivated to apply the hops composition of JP '332 by washing or dipping the infected udders and teats.

7. Claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat. No. 4,170,638 in view of Japanese Pat. Appl. No. 01172332 A for the reasons set forth on pages 4 and 5 of the previous Office action.

All of applicant's arguments regarding this ground of rejection have been fully considered but are not persuasive. Applicant argues that the combination of the references would lead a person of ordinary skill in the art to create a deodorant in the form of a soap, cream, paste, or powder. However, as explained above, JP '332 is considered to provide motivation to use a hops composition as a wash or a dip in treating infections caused by *Staphylococcus*

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aureus. Therefore, since US '638 teaches a composition that can be used topically to inhibit *S. aureus*, a person of ordinary skill would reasonably expect that the composition of US '638 could also be used in the manner taught by JP '332.

8. Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat. No. 5,370,863 in view of Japanese Pat. Appl. No. 01172332 A for the reasons set forth on page 5 of the previous Office action.

All of applicant's arguments regarding this ground of rejection have been fully considered but are not persuasive. Applicant argues that US '863 teaches an oral care product for humans that is completely different from the use of the hops claimed by applicant. However, as explained above, JP '332 is considered to provide motivation to use a hops composition as a wash or a dip in treating infections caused by *Staphylococcus aureus*. Therefore, since US '863 teaches a composition that can be used topically to inhibit *S. aureus*, a person of ordinary skill would reasonably expect that the composition of US '863 could also be used in the manner taught by JP '332.

9. No claims are allowed.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

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MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan Coe whose telephone number is (703) 306-5823. The examiner can normally be reached on Monday to Thursday from 8:00 to 5:30 and on alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brenda Brumback, can be reached on (703) 306-3220. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

Susan Coe, Examiner
March 31, 2003



LEON B. LANKFORD, JR.
PRIMARY EXAMINER